

PT 01-30

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

TRUSTEES OF FUNDS AND PROPERTY)		
OF THE DIOCESE OF QUINCY)	A.H. Docket #	00-PT-0036
Applicant)		
)	Docket #	99-72-84
v.)		
)	Parcel Index #	17-04-100-006
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Franklin S. Mitvalsky, attorney at law, appeared on behalf of the Trustees of Funds and Property of the Diocese of Quincy. Mr. Jim Day and Mr. Kent Steinkamp, Special Assistant Attorneys General, appeared on behalf of the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on January 11, 2001, to determine whether or not .835 of an acre of Peoria County Parcel Index No. 17-04-100-006 qualified for exemption from real estate taxation during all or part of the 1999-assessment year.

Peoria County Parcel Index No. 17-04-100-006, the parcel here in issue, includes Peoria County Parcel Index No. 17-04-100-002, the Old Christ Episcopal Church parcel. Peoria County Parcel Index No. 17-04-100-002 plus 50 feet of even width along the East boundary of parcel 17-04-100-002 plus 50 feet of even width along the North boundary of that parcel make up parcel

No. 17-04-100-006, the parcel here in issue. These fifty-foot strips of even width along the East side and North side of Peoria County Parcel Index No. 17-04-100-006 total .835 of an acre. These fifty-foot strips were acquired by the Trustees of Funds and Property of the Diocese of Quincy (hereinafter referred to as the "Applicant" or the "Trustees") by a warranty deed dated March 13, 1997. After the two fifty-foot strips were combined with parcel number 17-04-100-002, the entire parcel was reassigned parcel number 17-04-100-006 and old parcel number 17-040-100-002 was removed from the books. On October 12, 1999, the Trustees filed an application for exemption concerning Peoria County Parcel Index No. 17-04-100-006 with the Peoria County Board of Review. On May 11, 2000, the Illinois Department of Revenue (hereinafter referred to as the "Department") determined that Peoria County Parcel Index No. 17-04-100-006 qualified for exemption for the 1999 assessment year except for .835 of an acre which was not in exempt use. The Trustees then timely appealed this determination.

Rev. John R. Throop, Vicar of Christ Episcopal Church (hereinafter referred to as the "Church") was present and testified on behalf of the Church.

The issue in this matter is whether the Church used the .835 of an acre here in issue for religious or exempt purposes during all or part of the 1999-assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the Church used the .835 of an acre of the parcel here in issue as a part of the Churchyard during the period July 13, 1999, through December 31, 1999.

I therefore recommend that Peoria County Parcel Index No. 17-04-100-006 except for .835 of an acre be exempt for the first 53% of the 1999-assessment year. I further recommend that all of Peoria County Parcel Index No. 17-04-100-006 be exempt from real estate taxation for the last 47% of the 1999-assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter was established by the admission in evidence of Department's Exhibit No. 1, pages 1 through 64.

2. The Church was founded by Bishop Philander Chase on Easter Sunday in 1837. The construction of the present Church building began on May 10, 1844. During 1973 the Church building was placed on the National Register of Historic Places. (Tr. pp. 12 & 16)

3. The Church during 1999 had approximately 25 members. Religious services were held every Sunday morning during 1999 at 9:30 a.m. The average attendance at services during 1999 was 14. (Tr. pp. 13, 31 & 32)

4. The current Church building is very small and seats only 75 people. There is no room for any religious activities other than worship in the Church building. The only bathroom facility for the Church's parishioners is an outhouse. For the church to grow the Church needs a facility where it can hold Christian education classes, have church meetings and gatherings, and also inside bathrooms. (Tr. p. 15)

5. The Church property before the acquisition of the .835 acres here in issue contained the church building, the outhouse, the church cemetery, and a small parking area. (Tr. p. 15, Dept. Ex. No. 1, pp. 24 & 25)

6. The Bishop's Committee of each local Episcopal Church is responsible for the administration of the property, building, and grounds of the church. The Bishop's Committee of the Church is made up of 5 members appointed by the present Episcopal Bishop, Bishop Ackerman. Vicar Throop serves as chairman of the Bishop's Committee of the Church. (Tr. p. 13)

7. During 1997, the Bishop's Committee requested that the Vicar contact the owner of the property to the North and East of the Church property about acquiring some additional land on which to build a parish hall. Additional land was required to meet the set back requirements dictated by the Central Illinois Landmarks Foundation. The Central Illinois Landmarks Foundation is the organization that supervises the use and additions to buildings in the Peoria area that are on the National Register of Historic Places. (Tr. pp. 14 & 16)

8. The Vicar then contacted Dr. and Mrs. Bailey and on March 13, 1997, the Baileys conveyed the .835 acre parcel here in issue to the Trustees. (Dept. Ex. No. 1, pp. 5 & 6)

9. Peoria County Parcel Index No. 17-04-100-006, the parcel here in issue, includes Peoria County Parcel Index No. 17-04-100-002, the Old Christ Episcopal Church parcel. Peoria County Parcel Index No. 17-04-100-002 plus 50 feet of even width along the East boundary of parcel 17-04-100-002 plus 50 feet of even width along the North boundary of that parcel comprises Peoria County Parcel Index No. 17-04-100-006, the parcel here in issue. These fifty-foot strips of even width along the East side and North side of Peoria County Parcel Index No. 17-04-100-006 total .835 of an acre. These fifty-foot strips were acquired by the Trustees by the warranty deed dated March 13, 1997 described above. After the two fifty-foot strips were combined with parcel number 17-04-100-002, this entire parcel was reassigned Peoria County Parcel Index Number 17-04-100-006. Old Peoria County Parcel Index Number 17-040-100-002 was then removed from the books. (Dept. Ex. No. 1 pp. 20-23)

10. At about the same time, the Vicar on behalf of the Bishop's Committee of the Church, began looking for an architect. The Bishop's Committee chose Mr. Kenyon of Kenyon & Associates Architects to be the architect for the Church. Mr. Kenyon is very interested in historic preservation and is the chairman of Central Illinois Landmarks Foundation. (Tr. pp. 16 & 17)

11. On April 6, 1998, Kenyon and Associates billed the Church for a preliminary design for the Church parish hall. The Bishop's Committee approved this preliminary design in early 1999. (Tr. pp. 17 & 18, Dept. Ex. No. 1 pp. 26 & 27)

12. Kenyon and Associates has also advised the Church of the estimated minimum cost of the proposed parish hall. This figure is \$120,000.00. The Church has already started a building fund. At the end of 1999, the total of the building fund was approximately \$44,500.00. (Tr. pp. 20 & 30, Dept. Ex. No. 1, p. 24)

13. At the time that the Trustees purchased the .835 of an acre, all of the .835 of an acre was located outside the Churchyard boundary fence. This .835 of an acre tract had been used by Dr. and Mrs. Bailey as a part of a horse pasture. (Tr. p. 21, Dept. Ex. No. 1 pp. 19 & 33)

14. After the Church purchased the .835 of an acre, the Bishop's Committee discussed moving the existing Churchyard fence to include this .835 of an acre. This discussion began in 1997 shortly after the property was purchased and continued into 1999. Finally, after two years of discussions, it was agreed to move the fence. (Tr. p. 21)

15. The person installing the new fence requested that herbicide be applied to the area where the fence was being installed so that the fence could be completed. The invoice for the herbicide and the labor to apply it was dated July 13, 1999. Once the fence was moved, the Church cleared the new land of brush and tall grass to integrate this area into the Churchyard. (Tr. pp. 23 & 24, Dept. Ex. No. 1, p. 30)

16. On the first Sunday in October 1999 and also the first Sunday in October 2000 a service of the blessing of the animals was held on this .835 acre parcel. (Tr. pp. 24-26)

17. Persons who visit the graves in the Churchyard frequently walk on the .835 acre parcel here in issue to meditate and pray. (Tr. pp. 26 & 39)

18. At the time of the hearing in this matter no firm date had been set for the beginning of construction of the parish hall. (Tr. p. 37)

19. I take Administrative Notice of the Department's decision in Docket No. 86-72-1573 in which it was determined that Peoria County Parcel Index No. 17-04-100-002 which contained the original Churchyard, including the Church and the cemetery, qualified for exemption as being used for religious purposes for the 1986-assessment year. (Dept. Ex. No. 1, p. 20)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Concerning property used for religious purposes, 35 **ILCS** 200/15-40 provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . not leased or otherwise used with a view to profit, is exempt, (Emphasis supplied)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore clear that the burden of proof in this matter is on the Trustees.

The attorney for the Trustees put forth two contentions in his closing argument at the hearing in this matter. The first contention is that the Trustees purchased this property so that the Church can build a parish hall on it. The attorney for the Trustees then cited the case of Weslin Properties v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). The attorney for the Trustees then contended that like the Urgent Care Center in the Weslin Properties case the .835 acre parcel in this case during 1999 was under development and adaptation for exempt use for a

parish hall and therefore qualified for exemption during all of that year. In the Weslin Properties case, Weslin on May 26, 1983, purchased a 24.3-acre tract to be developed into an Urgent Care Center, hospital and related medical facilities. During 1984, construction on the Urgent Care facility began. During 1983, Weslin Properties, Inc. approved a site plan, and hired an architect. During 1985, before the Court rendered its decision, the Urgent Care Center was completed and occupied. The Court held that the Urgent Care Facility qualified for exemption during 1983, but that the remainder of said parcel did not qualify for exemption. The plans for the remainder of the parcel were not complete and there had not been sufficient adaptation and development for use of the remainder of said parcel during 1983. In this case, during 1999 while the Bishop's Committee had chosen an architect and approved the preliminary plan, the congregation had only raised \$44,500.00 of the necessary minimum amount for the parish hall of \$120,000.00. As of the date of the hearing in this matter, January 11, 2001, more than two years after the architect was hired, no firm date has been set for the beginning of construction of the proposed parish hall. It should be pointed out that in the Weslin Properties case financing for the Urgent Care Center was available. I therefore conclude that as far as constructing a parish hall is concerned that the Trustees have failed to establish that this .835 acre parcel was in the process of adaptation for exempt use during 1999.

The second contention put forth by the attorney for the Trustees is that during 1999 the Church moved the Churchyard boundary fence so that the .835 acre parcel here in issue was inside the fence. In addition, herbicide was applied, the brush was removed, and the grass was mowed so that this area went from being a part of a horse pasture to being a part of the Churchyard. On the first Sunday in October during both 1999 and 2000 the blessing of the animals religious service was held on the .835 acre parcel. It was also pointed out that persons visiting graves in the Churchyard used the .835 acre tract for prayer and meditation after the fence was moved. The evidence as to exactly when the fence moving was completed is somewhat unclear. However I conclude that by the date that the applying of the herbicide was billed the fence was completed. The invoice for applying the herbicide was dated July 13, 1999.

In the case of Lutheran Church of the Good Shepherd of Bourbonnais v. The Department of Revenue, 316 Ill.App.3d 828 (3rd Dist. 2000) the Court held that an area which had previously been farmed and was converted to use as churchyard by refraining from planting crops and mowing and planting grass qualified as sufficient adaptation for exempt use.

In this case moving the fence, applying herbicide, cutting the brush, and mowing was sufficient adaptation to convert the .835 acres here in issue to Churchyard which qualifies as a religious use. I therefore conclude that the .835 acres of the parcel here in issue qualified for exemption during the period July 13, 1999, through December 31, 1999.

I therefore recommend that Peoria County Parcel Index No. 17-04-100-006 except for .835 acres be exempt for the first 53% of the 1999-assessment year. I further recommend that all of Peoria County Parcel Index No. 17-04-100-006 be exempt from real estate taxation for the last 47% of the 1999-assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
April 30, 2001